

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Suresh Singh

versus

National Insurance Co. Ltd. &
another.

D.B.CIVIL SPECIAL APPEAL NO. 49/2006 against the judgment dated 11/11/2005 passed in S.B.Civil Misc.Appeal No.85/2001.

DATE OF JUDGMENT

:

6th July, 2006

P R E S E N T

HON'BLE SHRI RAJESH BALIA, J.

HON'BLE SHRI R.P.VYAS, J.

Mr.H.S.Sidhu, for the appellant.

Mr. Anil Bachawat]
Mr.Kailash Joshi,] for the respondents.

Reportable BY THE COURT: (PER HON'BLE RAJESH BALIA, J.)

Heard learned counsel for the parties.

The admitted facts which are not in dispute are that the appellant was working as Revenue Inspector under the Suratgarh Municipality on 7/5/1998 while he was driving the vehicle of Municipality. On that day, at about 1 a.m. tyre of the jeep burst and an accident took place, as a result of which the appellant suffered severe injury, which resulted in amputation of his right leg.

Information of the accident was given to the employer on 7/5/1998 and notice under the Workmen Compensation Act was given to the Municipality on 3/3/1999, however, no compensation was paid under the

aforesaid Act. He, therefore, lodged a claim before the Commissioner, Workmen Compensation, Sriganagar. The vehicle was insured with the National Insurance Company. Since the Municipal Board did not appear to contest after notice, the matter was proceeded ex-parte. The Insurance Company contested the claim inter alia on the ground that the vehicle was being driven by the claimant He was not holding a valid licence and also that since he was a Revenue Inspector and not a paid driver, therefore, Insurance cover will not cover the risk of the Revenue Inspector driving any vehicle. It also stated that the claim has been filed collusively with the Municipal Board to recover the money from the insurance company because the vehicle was insured with it.

The claimant produced before the Commissioner, Workmen Compensation a document stated to be authorising him to drive a vehicle and, therefore, it was stated that he was duly engaged as a driver at the time he was driving the vehicle when accident was caused. The Commissioner considering that the claimant was authorised by the Municipal Board to drive the vehicle and that he holds a valid driving licence, awarded the claim of Rs.1,60,641/- with interest of Rs.35,375/- totalling Rs.1,66,016/-.

Aggrieved with the aforesaid order, the National Insurance Company preferred Appeal being S.B.Civil Misc. Appeal No.85/2001. The learned Single Judge noticed that the claim petition clearly stated that the

claimant was employed as Revenue Inspector. Employment of Revenue Inspector is distinct and different from that of the employment of a driver. A driver is a workman and is subordinate to higher authorities of Municipal Board, including claimant. Services of an employed driver comes within the definition of workman. A Revenue Inspector is in a supervisory position. Those who are in supervisory positions have not been extended the benefit of labour laws in this country. Therefore, the learned Single Judge held that the claim under the Workman Compensation was not maintainable at the instance of the claimant. In view thereof, the order of the Commissioner, Workmen Compensation was set aside. Hence this appeal.

The only contention raised before us by the learned counsel for the appellant was that in terms of Section 2 of the Workmen Compensation Act, 1923, a workman has been defined as under:-

“Workan” means any person, who is -

(i) a railway servant as defined in Clause (34) of Sec.2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Sch.II, or

(ia) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is

specified in Sch.II, and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

(ii) employed in any such capacity as is specified in Sch.II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead includes a reference to his dependants or any of them.....”

He contends that two expressions have been used; firstly, that if a person is recruited as a driver he falls within the ambit of sub clause (c) of sub-clause (ia) of Clause (n) of Section 2. Obviously, the claimant having not been recruited as a driver does not fall within this definition. However, he urged that his case fell under sub-clause (ii) of clause (n) of Section 2. He submits that expression “employed” used in sub-clause (ii) is wide enough to include employed for the time being in the Institution of the employer to discharge the duties of a driver. Since the claimant was authorised by the employer to discharge the duties of driver, therefore, he fell within sub-clause (ii).

In our opinion, this contention is fallacious even on the terms of the document relied on by the claimant. The document on which reliance has been placed had been issued by the Executive Engineer of the Municipal Board, who has not chosen to appear before the Commissioner,

Workmen Compensation for telling the truth about it. The document which has been placed for our perusal reads as under:-

“कार्यालय नगर पालिका, सूरतगढ़

नगरपालिका के राजस्व निरीक्षक दिन एवं रात्री कालीन ड्यूटी / चैकिंग के समय पालिका की जीप सं. RJ 13 c 3696 को स्वयं चलाने के लिए अधिकृत हैं क्योंकि जीप पर एक ही चालक नियुक्त है जिससे 24 घण्टे ड्यूटी सम्भव नहीं है।

एस.डी.

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अधिशायी अधिकारी,
नगर पालिका, सूरतगढ़-

This document, at best, can be read as permitting the claimant Revenue Inspector to himself drive the vehicle while on duty whether during day time or night as only one driver is available and he cannot give his services for all the 24 hours. The aforesaid document nowhere assigns the duty of driver vis a vis Municipal Corporation as employer to the appellant-claimant, who is a Revenue Inspector. To say that the employer has authorised any of its employee to discharge the duties of driver is different from authorising any officer, who is not ordinarily supposed to drive the vehicle of the Municipal Board but can only use the vehicle of Corporation duly driven by a driver employed for that purpose. In the case of emergency like the one stated in the order is nothing but a permission to drive himself. This permission to drive the vehicle while going on duty, which otherwise the officer is not supposed to do, can hardly be said as assuming the duties of driver of the Corporation as such. To our specific

query whether any officer otherwise entitled to use the vehicle could take the services of the appellant-claimant as a driver under the said authorisation, the answer was clearly “No”. Therefore, by no stretch of imagination it can be said that vide order dated 1.4.1998 the appellant-claimant, who was employed as a Revenue Inspector, was assigned the duties of driver so as to fall within the purview of sub-clause (ii) of clause (n) of Section 2 of the Act, 1923 to mean that the claimant falls within the domain of expression “workman”.

Moreover, the petitioner has not lodged the claim before Motor Accident Claims Tribunal to claim compensation arising out of a motor accident, but had approached the Workmen Compensation Commissioner to claim compensation for injury caused to a workman due to accident arising out of and in the course of employment. Hence, the provisions of Motor Vehicle Act cannot be imported in deciding such claim.

Consequently, the appeal filed by the appellant fails. However, this is without prejudice to the right of the appellant to have his claim against the Municipal Board as its employee.

(R.P.VYAS), J.

(RAJESH BALIA), J.

Pankaj Baweja.